



Uniform Law Commission
NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

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October 15, 2012

Hon. John J. Walsh
Chairman
House Judiciary Committee
124 North Capitol Avenue
P.O. Box 30014
Lansing, MI 48909-7514

RE: In Support of SB689-The Uniform Unsworn Foreign Declarations Act

Dear Chairman Walsh:

I am writing on behalf of the Uniform Law Commission (ULC) in support of SB689, the Uniform Unsworn Foreign Declarations Act (UUFDA). Given Michigan's role in international trade as well as the global reach of its population, the UUFDA will enhance civil procedure by allowing the use of unsworn declarations in proceedings, so long as certain requirements are met. The act has been embraced by practitioners and judges across the country. Since its completion in 2008, 17 states have enacted this piece of legislation.

Prior to the September 11, 2001 attacks, individuals providing a statement for use in civil disputes were required to travel to a United States Embassy located in a foreign country and make a statement witnessed by a notary public who was authorized by the Embassy. However, due to heightened security and restrictions on Embassy access, obtaining a notarized statement became cumbersome and inefficient for those involved in affairs requiring statements of an individual located out of the country.

The solution offered by the UUFDA is rooted in federal law. The Federal Rules of Civil Procedure (28 U.S.C. § 1746) allow the use of unsworn foreign declarations made under the penalty of perjury for over 30 years. The UUFDA provides a bridge between the state and federal practices, and harmonizes the procedures for obtaining statements from those who may be overseas.

The UUFDA allows the use of unsworn foreign declarations made by declarants outside the United States in state law proceedings. In order for the statement to be valid for use in state proceedings, the individual must be located outside the geographic boundaries of the United States and the statement is sworn pursuant to the form in the act which provides for a penalty of perjury if the statement is untruthful. Once made, the statement can be used in civil, criminal, and regulatory proceedings with the same effect as a sworn statement made within the United States. The statement cannot be used for a deposition, an oath of office, declarations necessary for certain actions under real estate or estate law, and any oath required to be given before a specified official other than a notary public.

Keeping with the limited scope of the act, an sworn foreign declaration made within the geographic boundaries of the United States, even if the location is under the control of another foreign sovereign, is not deemed to be outside the boundaries of the United States.

In sum, the UUFDA harmonizes local treatment of unsworn declarations with the federal rules and alleviates the burdens existent for declarants that are out of the country, improving the legal practice. Consular offices will also benefit, as the UUFDA removes the responsibility to provide notaries to execute statements necessary for legal proceedings. I urge the Committee to act favorably on this Act. I would be happy to answer any questions from the Committee.

SB689 responds to world events impacting the admissibility of declarations during court proceedings. I urge for the adoption of SB689. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric M. Fish", with a stylized flourish at the end.

Eric M. Fish
Senior Legislative Counsel
Uniform Law Commission